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Supreme Court, U.S.
FILED
MAY 20 1996
CLERK

No. 95-1703

In The

Supreme Court of the United States

October Term, 1995

MICHAEL R. WOOD,

Petitioner,

v.

ALAMEDA COUNTY SUPERIOR COURT,
DENNIS McDONALD,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate District

RESPONDENT DENNIS McDONALD'S BRIEF IN OPPOSITION

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12 pp

TABLE OF CONTENTS

Page

Response to Statement of Facts 2

REASONS FOR DENYING THE WRIT 2

The Decisions Below Properly Held that the State Court Has Jurisdiction To Hear the Unlawful Detainer Action 2

Wood Was Not Served With a Defective Summons 4

Wood Was Not "Immune" From Service of the Summons 5

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES:

Buller v. Buller, 62 Cal.App.2d 687, 145 P.2d 653 (1944) 3

Courtney v. Abex Corp., 176 Cal.App.3d 343, 221 Cal.Rptr. 770 (1986) 5

Fanning v. Foley, 99 Cal. 336 (1893) 4

O'Shea v. Claude C. Wood Co., 97 Cal.App.3d 903, 159 Cal.Rptr. 125 (1979) 3

S.R.A., Inc. v. Minnesota, 327 U.S. 558 (1945) 4

Torgerson v. Smith, 98 Cal.App.3d 948, 159 Cal.Rptr. 781 (1979) (overruled on other grounds in *Johnson & Johnson v. Superior Court*, 38 Cal.3d 243 (1985) 5

United States v. Rauscher, 119 U.S. 407 (1886) 5

Wyman v. Newhouse, 93 F.2d 313 (2nd Cir. 1937) 5

OTHER AUTHORITIES:

Art. 1, § 8, Cl. 17 United States Constitution 3

California Code of Civil Procedure § 415.45 1

California Code of Civil Procedure § 418.10 1

RESPONDENT'S BRIEF IN OPPOSITION

In his Petition for Writ of Certiorari (hereinafter "Petition") petitioner Michael R. Wood (hereinafter "Wood") seeks review of denial of a petition for writ of mandate sought from the First Appellate District of the Court of Appeal of the State of California (see, Petitioner's Appendix, A2).[1] The petition to the Court of Appeal followed entry of dismissal by the Alameda County Superior Court or a petition for writ of mandate filed by Wood after denial of a motion to quash service in an action brought by Respondent Dennis McDonald (hereinafter "McDonald") in the Alameda County Municipal Court (Ptr. App. A3-A6, A7-A8).

McDonald filed the action in the Municipal Court in April, 1995 to recover possession, under California's unlawful detainer statutes, of premises rented by him to Wood at the "Hayward Air Terminal" in Hayward, California. After unsuccessfully attempting to personally serve Wood with the summons and complaint, McDonald obtained an order from the Municipal Court to permit service by "posting and mailing" under California Code of Civil Procedure §415.45 (Respondent's Appendix A).[2] Wood responded by filing a motion to quash service under California Code of Civil Procedure §418.10 (Res. App. B). After denial of that motion, Wood filed a petition for writ of mandate in the Alameda County Superior Court. At the hearing in August, 1995, McDonald opted

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[1] Wood's request for review by the California Supreme Court was denied as well. Petitioner's Appendix (Ptr. App.) A1.

[2] Hereinafter "Res. App."

to effect personal service of the Municipal Court summons on Wood (Petition, p. 12). Although the nominal effect was to permit Wood's petition to be granted, the practical reason was simply to try to expedite the unlawful detainer action by rendering moot Wood's claim that he had not been afforded adequate notice by the prior substitute service.

The Municipal Court's denial of the second motion to quash, following personal service of the summons, described above, is the basis for the subsequent proceedings leading to this Petition.

RESPONSE TO STATEMENT OF FACTS

Wood has made several misstatements in his Petition. The facts underlying the alleged controversy over the ownership of the premises and, hence, jurisdiction of the case, are not as Wood claims. (Petition, p. 5). Wood contends, without proof, that the City of Hayward is a mere "licensee" with respect to the premises. Yet, Wood admits the United States conveyed the premises to the City by **deed.** As discussed below, that admission is dispositive of Wood's petition and the alleged federal questions asserted in it.

REASONS FOR DENYING THE WRIT

The Decisions Below Properly Held that the State Court Has Jurisdiction To Hear the Unlawful Detainer Action

In April, 1947, the United States delivered to the City of Hayward a quitclaim deed to the subject premises

(Petition, p. 9). Wood points to no evidence or authority for his assertion that this quitclaim deed, despite its title, was in fact only a "license." Indeed, Wood cites several portions of the deed itself (Petition, p. 10) establishing that a conveyance of title, not a mere license, in fact occurred, the only notable feature being that the title conveyed contained certain reservations and restrictions which, if **violated** by the City, could entitle the United States to reversion of the premises. However, nowhere does Wood refer to any evidence that any such demand for reversion has ever occurred.

A quitclaim deed is as effective as any other deed to transfer all of a grantor's estate, title, right and interest to a grantee. *Buller v. Buller,* 62 Cal.App.2d 687, 698-699; 145 P.2d 653 (1944). A license, on the other hand, conveys no title at all, but merely gives authority to perform an act or acts on property of another. It is personal to the licensee and cannot be conveyed or assigned by him. *O'Shea v. Claude C. Wood Co.,* 97 Cal.App.3d 903, 909, 159 Cal.Rptr. 125 (1979).

Since the City of Hayward, and not the United States, owns the premises, the state courts clearly had subject matter jurisdiction to decide competing claims to possession among the City's lessees. Art. 1, §8, Cl. 17 of the United States Constitution thus does not apply. As pointed out in one case cited by Wood:

> As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would

> end with the reason for its existence and the disposition of the property.
>
> *S.R.A., Inc. v. Minnesota*, 327 U.S. 558, 564 (1945)

In summary, there simply is no issue of federal jurisdiction.

McDonald submits all of Wood's other claims of error, e.g., the sufficiency of the Municipal Court complaint to state a cause of action for unlawful detainer under California law and the claim that McDonald lacked standing to sue to recover possession, were fully within the jurisdiction of the California court to determine. However, to avoid any possible suggestion of waiver of opposition to the alleged due process claims, McDonald notes the following:

Wood Was Not Served With a Defective Summons

Wood has failed to disclose the existence of case law, applied by the lower courts, that return of the original summons did not preclude subsequent service of a copy of the summons in order to obtain personal jurisdiction over him in the Municipal Court action. Wood cites only an 1893 decision which merely stated, in *dictum*, that once an original summons has been returned it becomes "functus officio," or "without effect." See, *Fanning v. Foley*, 99 Cal. 336 (1893). Wood has repeatedly misconstrued the case, arguing that the return of the original summons to the court after the initial service under the May, 1995 order permitting posting and mailing rendered it impossible thereafter for him to be served in the action. The actual ruling in *Fanning* was simply that returning

the summons did not extend the then-applicable statutory time limitation for service of the summons. See, *Torgerson v. Smith*, 98 Cal.App.3d 948, 951; 159 Cal.Rptr. 781 (1979) (overruled on other grounds in *Johnson & Johnson v. Superior Court*, 38 Ca1.3d 243, 254 fn. 7 (1985)).

The purpose of requiring a return of the summons is simply to notify the court that the plaintiff is complying with applicable time requirements and, further, that the defendant has received notice of the action. Accordingly, it has been held that process statutes are to be liberally construed. Therefore, service made with a copy of the summons rather than the original is effective to acquire personal jurisdiction over the defendant. *Courtney v. Abex Corp.*, 176 Cal.App.3d 343, 347; 221 Cal.Rptr. 770 (1986).

It should be noted that the case cited by Wood in support of his claim, *Wyman v. Newhouse*, 93 F.2d 313 (2nd Cir., 1937) nowhere mentions the term "functus officio summons," or expiration of the effectiveness of a summons after return to the court.

Wood Was Not "Immune" From Service of the Summons

Wood cites the case of *United States v. Rauscher*, 119 U.S. 407 (1886) for the proposition that he was entitled to "immunity" from service of process while appearing in the Superior Court for the hearing on his petition for writ of mandate in August of 1995. *Rauscher* had nothing to do with service of a summons in a civil case, but involved the scope of an extradition treaty between the United States and Great Britain, to wit: whether a defendant, extradited to this country pursuant to the treaty, could legally be subjected to trial on a criminal charge other

than that specified in the treaty or, rather, must he be deemed immune from prosecution on any other charges absent an opportunity to return to the country from which he was taken. It is plainly inapplicable to this case.

CONCLUSION

For the above reasons, the Petition should be denied.

Respectfully submitted,

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Appendix A

§ 415.45. Posting summons in action for unlawful detainer

(a) A summons in an action for unlawful detainer of real property may be served by posting if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in any manner specified in this article other than publication and that:

(1) A cause of action exists against the party upon whom service is to be made or he is a necessary or proper party to the action; or

(2) The party to be served has or claims an interest in real property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding such party from any interest in such property.

(b) The court shall order the summons to be posted on the premises in a manner most likely to give actual notice to the party to be served and direct that a copy of the summons and of the complaint be forthwith mailed by certified mail to such party at his last known address.

(c) Service of summons in this manner is deemed complete on the 10th day after posting and mailing.

(d) Notwithstanding an order for posting of the summons, a summons may be served in any other manner authorized by this article, except publication, in which event such service shall supersede any posted summons.

Appendix B

§ 418.10. Notice of motion to quash service or to stay or dismiss action; Petition for writ of mandate, and responsive pleading; Default and general appearance

(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion either or both:

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

(2) To stay or dismiss the action on the ground of inconvenient forum.

(b) The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days.

(c) If the motion is denied by the trial court, the defendant, within 10 days after service upon him or her of a written notice of entry of an order of the court denying his or her motion, or within any further time not exceeding 20 days that the trial court may for good cause allow, and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or

staying or dismissing the action. The defendant shall file or enter his or her responsive pleading in the trial court within the time prescribed by subdivision (b) unless, on or before the last day of the defendant's time to plead, he or she serves upon the adverse party and files with the trial court a notice that he or she has petitioned for a writ of mandate. The service and filing of the notice shall extend the defendant's time to plead until 10 days after service upon him or her of a written notice of the final judgment in the mandate proceeding. The time to plead may for good cause shown be extended by the trial court for an additional period not exceeding 20 days.

(d) No default may be entered against the defendant before expiration of his or her time to plead, and no motion under this section, or under Section 473 or 473.5 when joined with a motion under this section, or application to the court or stipulation of the parties for an extension of the time to plead, shall be deemed a general appearance by the defendant.